

2016 JUL 19 PM 3:42

Seattle Rule 5-039

Employees distinguished from persons engaging in business.

(1) Introduction. The Seattle Municipal Code imposes taxes and fees upon persons engaged in business but not upon persons acting solely in the capacity of employees pursuant to SMC 5.45.090(S). This rule states the conditions that serve to indicate whether a person is engaging in business or is an employee.

(2) Considerations. While no one factor definitely determines employee status, the most important consideration is the employer's right to control the employee. The right to control is not limited to controlling the result of the work to be accomplished, but includes controlling the details and means by which the work is accomplished. In cases of doubt about employee status all the pertinent facts should be submitted to the License and Tax Administration for a specific determination.

(3) Persons engaging in business. For the purpose of determining whether an individual is an employee or independent contractor, the term "engaging in business" includes commencing, conducting, or continuing in business, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business. SMC 5.30.030(B)(1). Engaging in business also includes the act of transferring, selling or otherwise dealing in real or personal property, or the rendition of services, for consideration except as an employee. The following conditions will serve to indicate that a person is engaging in business.

If a person is:

- (a) Holding oneself out to the public as engaging in business with respect to dealings in real or personal property, or in respect to the rendition of services;
- (b) Entitled to receive the gross income of the business or any part thereof;
- (c) Liable for business losses or the expense of conducting a business, even though such expenses may ultimately be reimbursed by a principal;
- (d) Controlling and supervising others, and being personally liable for their payroll, as a part of engaging in business;
- (e) Employing others to carry out duties and responsibilities related to engaging in business and being personally liable for their pay;
- (f) Filing a statement of business income and expenses (Schedule C) for federal income tax purposes;
- (g) A party to a written contract, the intent of which establishes the person to be an independent contractor; or
- (h) Paid a gross amount for the work without deductions for employment taxes (such as Federal Insurance Contributions Act, Federal Unemployment Tax Act, and similar state taxes).

(4) Employees. The following conditions indicate that a person is an employee.

If the person:

(a) Receives compensation, which is fixed at a certain rate per day, week, month or year, or at a certain percentage of business obtained, payable in all events;

(b) Is employed to perform services in the affairs of another, subject to the other's control or right to control;

(c) Has no liability for the expenses of maintaining an office or other place of business, or any other overhead expenses or for compensation of employees;

(d) Has no liability for losses or indebtedness incurred in the conduct of the business;

(e) Is generally entitled to fringe benefits normally associated with an employer-employee relationship, e.g., paid vacation, sick leave, insurance, and pension benefits;

(f) Is treated as an employee for federal tax purposes;

(g) Is paid a net amount after deductions for employment taxes, such as those identified in subsection (3)(h) of this section.

(5) Full-time life insurance salespersons. SMC 5.45.090(S) provides that individuals performing services as full-time life insurance salespersons, as provided in section 3121 (d)(3)(B) of the Internal Revenue Code, will be considered employees. Treatment as an employee under this subsection (5) applies only to persons engaged in the full-time sale of life insurance. The status of other persons, including others listed in section 3121(d) of the Internal Revenue Code, will be determined according to the provisions of subsections (2) through (4) of this section. See Seattle Rule 5-526 for the proper tax treatment of insurance agents, brokers, and solicitors.

(6) Operators of rented or owned equipment. Persons who furnish equipment on a rental or other basis for a charge and who also furnish the equipment operators, are engaging in business and are not employees of their customers. Likewise, persons who furnish materials and the labor necessary to install or apply the materials, or produce something from the materials, are presumed to be engaging in business and not to be employees of their customers.

(7) Casual laborers. Persons regularly performing odd job carpentry, painting or paperhanging, plumbing, bricklaying, electrical work, cleaning, yard work, etc., for the public generally are presumed to be engaging in business. The burden of proof is upon such persons to show otherwise.

(8) Entities. A corporation, joint venture, or any group of individuals acting as a unit, is not an employee.

(9) Booth renters. For purposes of the business license tax a "booth renter," as defined in RCW 82.04.360(3), is considered engaged in business and not an employee.

(a) A "booth renter" is any person who:

(i) Performs cosmetology, barbering, esthetics, or manicuring services for which a license is required pursuant to chapter 18.16 RCW; and

(ii) Pays a fee for the use of salon or shop facilities and receives no compensation or other consideration from the owner of the salon or shop for the services performed.

(b) For the taxability of amounts received for the rental or licensing of real estate refer to Rule 5-530. Refer to Rule 5-132 for the taxability of amounts received for leased departments.

(10) Personal chefs. Personal chefs are engaging in a business as independent contractors. They prepare meals for consumption at their clients' homes. Personal chefs typically serve multiple clients, working with the clients to create personalized meal plans based on the client's specific dietary requirements or requests. The meals may be prepared in the client's home or in a commercial kitchen and delivered to the client's home. Personal chefs may also prepare meals for social events, such as dinner parties, cocktail parties, engagement parties, weddings, or receptions.

DIRECTOR'S CERTIFICATION

I, Glen M. Lee, Finance Director of the City of Seattle, do hereby certify under penalty of perjury of law, that the within and foregoing is a true and correct copy as adopted by the City of Seattle, Department of Finance and Administrative Services.

DATED this 14 day of July 2016.

CITY OF SEATTLE,

a Washington municipality

By: _____

Glen M. Lee, Finance Director

Department of Finance and Administrative Services

Effective date: July 14, 2016

MEMORANDUM

TO: Monica Martinez Simmons, City Clerk

FROM: Glen Lee, Finance Director
Joseph Cunha, City Tax Administrator, and
Mark Watterson, Tax Audit Manager
License & Tax Administration

DATE: July 19, 2016

RE: The Official Published Notice:
**Director's Business Tax Rules amendments and adoption for SMC
Chapter 5.45 effective July 14, 2016**

FILED
CITY OF SEATTLE
2016 JUL 19 PM 3:41
CITY CLERK

Please file the attached paperwork concerning the following amended City of Seattle "Tax Rules":

- 5-002 Business License Requirements
- 5-003 Business license suspension and revocation
- 5-004 Transfer of business license
- 5-005 Time payments
- 5-007 Penalties
- 5-008 Recordkeeping requirements
- 5-009 Limitations on tax assessments
- 5-012 Refunds
- 5-030 Persons making sales through a direct seller's representative
- 5-034 Finance charges, carrying charges, interest and penalties
- 5-039 Employees distinguished from persons engaging in business
- 5-043 Engaging in business
- 5-064 Credit losses, bad debts, recoveries
- 5-127 Sales to, and by, the State of Washington, counties, cities, school districts and other municipal subdivisions
- 5-129 Tribes and Tribal members/Citizens
- 5-132 Leased departments
- 5-133 Warranties and maintenance agreements
- 5-404 Sales of meals
- 5-481 Motor carriers - Trucking
- 5-531 Sales of real property, standing timber, minerals, natural resources
- 5-901 Admission tax exemption

Please file the attached paperwork concerning the following adopted City of Seattle "Tax Rule":

5-193 Waterborne Transportation

An Affidavit of Publication for the "Notice of Proposed Rule Hearing and Opportunity to Comment" that went to the *Daily Journal of Commerce* for publication on May 27, 2016 is also included in this packet. The required public hearing was held on June 16, 2016 at 10:00 A.M. in Seattle Municipal Tower.

If we can provide any additional information, please let us know. You may contact Mark Watterson, Tax Audit Manager (206) 233-7095 for any questions.

STATE OF WASHINGTON -- KING COUNTY

--SS.

337883

No.

CITY OF SEATTLE:FINANCE&ADMIN

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

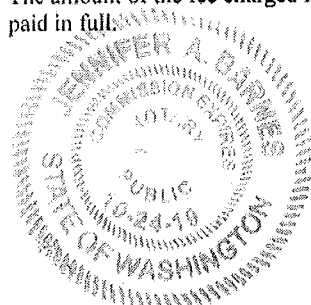
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:PROPOSED RULE MAKING

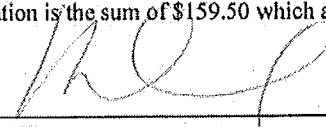
was published on


05/27/16

The amount of the fee charged for the foregoing publication is the sum of \$159.50 which amount has been paid in full.



Affidavit of Publication



05/27/2016 

Subscribed and sworn to before me on

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle

NOTICE OF PROPOSED RULE MAKING HEARING AND OPPORTUNITY TO COMMENT

The Director of Finance, acting under the authority of Seattle Municipal Code Chapters 3.02 and 5.55, proposes to adopt new rules for implementing the Seattle Business License Tax Ordinances (Seattle Municipal Code Chapters 5.45 and 5.49). Please note that although these rules are applicable to SMC 5.45 and 5.49, the individual rules may also apply to other chapters of the City's Tax Code, including but not limited to, SMC 5.30 (Definitions), SMC 5.32 (Revenue Code), SMC 5.35 (Commercial Parking Tax), SMC 5.40 (Admissions Tax), SMC 5.48 (Business Tax - Utilities), SMC 5.52 (Gambling Tax), and SMC 5.55 (General Administrative Provisions). The following rules are proposed for adoption or amendment and will become effective as of July 15, 2016:

Seattle Rule 5-002 Business license requirements

Seattle Rule 5-003 Business license suspension and revocation

Seattle Rule 5-004 Transfer of business license

Seattle Rule 5-005 Time payments

Seattle Rule 5-007 Penalties

Seattle Rule 5-008 Recordkeeping requirements

Seattle Rule 5-009 Limitations on tax assessments

Seattle Rule 5-012 Refunds

Seattle Rule 5-030 Persons making sales through a direct seller's representative

Seattle Rule 5-034 Finance charges, carrying charges, interest and penalties

Seattle Rule 5-039 Employees distinguished from persons engaging in business

Seattle Rule 5-043 Engaging in business

Seattle Rule 5-064 Credit losses, bad debts, recoveries

Seattle Rule 5-127 Sales to, and by, the state of Washington, counties, cities, school districts and other municipal subdivisions

Seattle Rule 5-129 Tribes and tribal members/citizens

Seattle Rule 5-132 Leased departments

Seattle Rule 5-133 Warranties and maintenance agreements

Seattle Rule 5-193 Waterborne transportation

Seattle Rule 5-404 Sales of meals

Seattle Rule 5-481 Motor carriers - Trucking

Seattle Rule 5-531 Sales of real property, standing timber, minerals, natural resources

Seattle Rule 5-901 Admission tax exemption

PUBLIC HEARING AND COMMENT:
The Department of Finance and Administrative Services has scheduled a public hearing on the proposed rule changes for 10 a.m. to noon, on June 16, 2016. The hearing will be held in a conference room on the 40th floor of the Seattle Municipal Tower, Suite 4090, located at 700 Fifth Ave. All interested persons are invited to present data, views or arguments, with regard to the proposed rules, orally at the hearing or in writing at or before the hearing.

Written comments should be mailed or delivered to:

Department of Finance and Administrative Services

Attn: Mark Watterson, Tax Manager

License and Tax Administration

700 Fifth Ave. - Suite 4250

P.O. Box 34214

Seattle, WA 98124-4214

The public may inspect copies of the proposed rules at the License and Tax Administration offices, 700 Fifth Ave., Suite 4250. If you would like a copy of the proposed rules, please call (206) 235-3769, FAX (206) 684-5170, email: tax@seattle.gov, or submit a written request to the address above.

Glen Lee, Finance Director, Department of Finance and Administrative Services

Date of publication in the Seattle Daily Journal of Commerce, May 27, 2016.

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